IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants:	C. Kost et al.	Attorney Docket No.:	MMSI121562
Application No.:	10/674,904	Art Unit: 3688 / Confirmation No.:	8999
Filed:	September 30, 2003	Examiner:	D. Lastra
Title:	DRUG SAMPLE FULFILLMENT ARCHITECTURE		

APPELLANTS' APPEAL BRIEF

Seattle, Washington
July 28, 2008

TO THE COMMISSIONER FOR PATENTS:

This Appeal Brief is in support of a Notice of Appeal filed April 28, 2008, to the Board of Patent Appeals and Interferences appealing the decision dated December 12, 2007, of the Primary Examiner finally rejecting Claims 1, 2, 4-10, 16-25, 31, 33-45, and 51-55.

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I. REAL PARTY IN INTEREST

The subject application is owned by MedManage Systems, Inc., of Bothell, Washington.

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II. RELATED APPEALS AND INTERFERENCES

Upon information and belief, Appellants do not have any knowledge of related appeals or interferences that may directly affect or have a bearing on the decision of the Board of Patent Appeals and Interferences (hereinafter "the Board") in the pending appeal.

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III. STATUS OF CLAIMS

This appeal follows in which appellants entreat the Board to reverse the final rejections of Claims 1, 2, 4-10, 16-25, 31, 33-45, and 51-55. The claims on appeal are set forth in the Claims Appendix.

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IV. STATUS OF AMENDMENTS

On September 30, 2003, Appellants filed the pending patent application claiming the benefits of U.S. Provisional Patent Application No. 60/472,956, filed May 22, 2003, including Claims 1-50. On January 31, 2005, the Examiner mailed a first Office Action restricting Claims 1-50. On March 10, 2005, Appellants filed a response to the Restriction Requirement, selecting Claims 1-10, 16-25, 31-45, and adding new Claims 51-55, as well as canceling Claims 11-15. On May 23, 2005, the Examiner mailed a second Office Action rejecting Claims 1-10, 16-25, 31-45, and 51-55. On June 7, 2005, Appellants filed an amendment and response in which Claim 1 was amended. On August 1, 2005, the Examiner mailed a third Office Action, finally rejecting Claims 1-10, 16-25, 31-45, and 51-55. On August 8, 2005, Appellants filed a Response After Final. On September 16, 2005, the Examiner mailed another Office Action, again rejecting Claims 1-10, 16-25, 31-45, and 51-55. On December 5, 2005, Appellants filed another amendment along with § 1.131 affidavit with exhibits, including amendments to Claims 1, 6, 16, 21, and 31. Another final Office Action was mailed on March 20, 2006, by the Examiner, finally rejecting Claims 1-10, 16-25, 31-45, and 51-55. On July 18, 2006, Appellants filed another Response After Final. On August 16, 2006, the Examiner mailed an Advisory Action, maintaining the rejections of Claims 1-10, 16-25, 31-45, and 51-55. On August 28, 2006, Appellants filed a Request for Continued Examination with amendments to Claims 1, 16, 21, and 31. On October 19, 2006, the Examiner mailed a further Office Action rejecting Claims 1-10, 16-25, 31-45, and 51-55. On April 19, 2007, Appellants filed another amendment with exhibits to Claims 1, 5, 6, 16, and 31. On June 12, 2007, the Examiner mailed an additional Office Action rejecting Claims 1, 2, 4-10, 16-25, 31, 33-45, and 51-55. On August 3, 2007, Appellants filed an additional amendment and response amending Claims 1, 5-10, 16, 21, 22, 26, 31, 34, 39, 41, 45, and 53. On December 12, 2007, the Examiner mailed a further final Office

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Action, finally rejecting Claims 1, 2, 4-10, 16-25, 31, 33-45, and 51-55. On April 28, 2008, Appellants filed an Amendment After Final amending Claim 31. On June 9, 2008, the Examiner mailed an Advisory Action, entering the Amendment After Final but maintaining the rejections of all previous rejected Claims 1, 2, 4-10, 16-25, 31, 33-45, and 51-55.

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V. SUMMARY OF CLAIMED SUBJECT MATTER

Regarding the claims, independent Claim 1 is directed to a system for promoting pharmaceutical drugs. See page 4, lines 6-7. The system comprises a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site. See page 7, lines 6-18; page 11, line 29, to page 12, line 10. The system further comprises a computer-implementable drug sample fulfillment platform that is Web based for implementing the set of brand rules to allow a prescriber to obtain drug samples to dispense to a patient without the use of a sales representative. See page 4, lines 8-10; FIGURE 3A; FIGURE 3B; page 7, lines 19-23; page 7, lines 28; page 8, line 7; element 208 of FIGURE 2B; page 8, lines 19-31; page 9, lines 19-31; page 10, lines 1-18; page 17, line 31, to page 18, line 13. The system also comprises the mating of the computer-implementable drug sample fulfillment platform with either the brand Web site or the another brand Web site depending on an exchanged transaction that includes a prescriber identifier and a partner identifier so as to open the computer-implementable drug sample fulfillment platform within the brand Web site or the another brand Web site. See FIGURES 3A-3B; element 208 described at page 7, lines 19-27, to page 8, line 7; page 8, lines 19-31; page 9, lines 19-31; page 10, lines 1-18; page 11, lines 6-28; page 12, line 31, to page 13, line 8; FIGURE 4A as described at page 17, lines 26-30; FIGURE 4D as described at page 18, lines 2-13. The system additionally comprises that the computer-implementable drug sample fulfillment platform electronically notifies the prescriber about the availability of drug samples, the brand Web sites being neither a pharma Web site nor a Web site maintaining the computer-implementable drug sample fulfillment platform. See page 12, lines 7-10.

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Claims 2, 4, 5, 51, and 52 are dependent from independent Claim 1 and are directed to further limitations of the system described above. Claim 2 is dependent on Claim 1 and recites that drug samples include physical samples. Claim 3 is canceled. Claim 4 is dependent on Claim 1 and recites that drug samples include a coupon printed in the office of the prescriber, which is networked to the drug sample fulfillment platform. Claim 5 is dependent on Claim 4 and recites that the drug sample vouchers, which are in a printed form, are redeemable at a pharmacy. Redeemed data is generated by the drug sample fulfillment platform for refining the brand rules so as to better guide allocation and distribution of the drug samples. Claim 51 is dependent on Claim 1 and recites that the fulfillment platform comprises a pharma rules sample engine for performing personalization and intelligent brand rule implementation, a marketing sample engine for integrating the drug sample suppliers and Web portals for prescribers, and the pharma rules sample engine and the marketing sample engine being based on the set of brand rules and on a set of prescriber preferences. Claim 52 is dependent on Claim 51 and recites that the marketing sample engine links the drug sample fulfillment platform to one or more suppliers and drug samples so as to inhibit the lack of supply of sample drugs desired by the prescriber or inhibit the inconsistent supply of drug samples desired by the prescriber.

Independent Claim 6 is directed to a system for distributing pharmaceutical drugs. See page 4, lines 11-12. The system comprises a drug sample fulfillment platform that comprises a drug sample Web site for mating with one or more third party sites depending on an exchanged transaction that includes a prescriber identifier and a partner identifier so as to open the drug sample Web site within the party site instead of another third party site for accessing drug sample services without the use of a sales representative. See page 4, lines 12-13; FIGURES 3A-3B; element 208 described at page 7, lines 19-27, to page 8, line 7; page 8, lines 19-31; page 9, lines 19-31; page 10, lines 1-18; page 11, lines 6-28; page 12, line 31, to page 13, line 8;

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FIGURE 4A as described at page 17, lines 26-30; FIGURE 4D as described at page 18, lines 2-13. The system further comprises a first set of Web pages coupled to the drug sample fulfillment platform through which a prescriber can access the drug sample fulfillment platform to order drug samples if a set of brand rules which specify drug sample availability and characteristics for the prescriber permits the prescriber to access the drug sample fulfillment platform. See page 7, lines 6-13; page 7, lines 28, to page 8, line 1; element 206 of FIGURE 2A. The system further comprises the set of brand rules that causes the drug samples available to the prescriber, who is a member of the one third party Web site, to be different from the available drug samples of the another third party site. See page 7, lines 13-18; page 9, lines 8-11; page 9, lines 14-18; page 14, lines 14-21; element 324 of FIGURES 3A-3B; page 14, lines 26-31; page 17, lines 1-11; FIGURE 4C.

Claims 7-10, and 53-55 are dependent from independent Claim 6 and are directed to further limitations of the system described above. Claim 7 is dependent on Claim 6 and recites that a second set of Web pages coupled to the drug sample fulfillment platform through which a sales representative can access the drug sample fulfillment platform to print sample vouchers coupons. Claim 8 is dependent on Claim 6 and recites a third set of Web pages coupled to the drug sample fulfillment platform through which a patient can access the drug sample fulfillment platform to obtain sample vouchers and coupons. Claim 9 is dependent on Claim 6 and recites that the first set of Web pages display a list of drug samples available to the prescriber to order drug samples in a form selected from a group consisting of physical samples, pre-printed vouchers, and print on-demand sample vouchers and coupons. Claim 10 is dependent on Claim 6 and recites that the first set of Web pages display a list of the order history of the prescriber. The list includes a date, drug samples, dosages, and quantity ordered by the prescriber. Claim 53 is dependent on Claim 6 and recites that the fulfillment platform

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implements a set of brand rules under which pharmaceutical drug samples are distributed, when said brand rules include: products; allocation quantities; dosages; sample types selected from a group consisting of live samples, pre-printed coupons/sample vouchers, and on-demand print sample vouchers/sample vouchers. Claim 54 is dependent on Claim 6 and recites that the fulfillment platform implements a set of brand rules for distributing pharmaceutical drug samples, the brand rules including timing considerations that are selected from a group consisting of sample offer time limits and rolling expiration dates for vouchers from either within or between brands for which a quantity of drug samples can be ordered. Claim 55 is dependent on Claim 6 and recites that the fulfillment platform comprises a pharma rules sample engine for implementing brand rules under which a prescriber may obtain drug samples, the pharma rules sample engine modifying the brand rules so as to change the quantity limit of the drug samples to be distributed to the prescriber.

Independent Claim 16 is directed to a drug sample fulfillment platform. The drug sample fulfillment platform comprises a drug sample Web site for mating with a brand Web site or another brand Web site that is selected from a group consisting of prescriber-oriented Web portals providing direct or indirect access to drug and/or general medical information, an e-Detailing service, a Web site regarding a drug brand or group of brands, and an online physician learning site. See page 9, lines 22-31; page 4, lines 23-28. The mating is dependent on an exchanged transaction that includes a prescriber identifier and a partner identifier so as to open the drug sample Web site within the brand Web site instead of another brand Web site. See FIGURE 2C described at page 11, lines 6-12; FIGURE 4D described at page 18, lines 6-13. The drug sample fulfillment platform of Claim 16 additionally recites a request database for receiving requests of a prescriber to the drug sample Web site for drug samples. See page 4, lines 27-28; element 232 of FIGURE 2C; page 11, lines 14-18; page 12, lines 21-30; page 13, lines 19-32;

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page 18, lines 14-28; FIGURE 4G; page 19, lines 14-24. The request database responds to the prescriber by allowing the prescriber to print sample vouchers or coupons or to print an order form for physical samples or pads of pre-printed vouchers, without the use of a sales representative. See page 4, lines 29-30. A set of brand rules allows the prescriber, while a member of the brand Web site, to receive a set of drug samples in the form of print sample vouchers and coupons, order forms for physical samples, or pads of pre-printed vouchers and in dosages and quantities different from another set of drug samples, dosages and quantities, while the prescriber is a member of another brand Web site. See page 7, lines 6-18; FIGURE 2C; page 11, lines 6-12; page 18, lines 6-13. The drug sample fulfillment platform electronically notifies the prescriber when the prescriber has not ordered drug samples for a certain amount of time. See page 9, lines 26, 31.

Claims 17-20 are dependent from independent Claim 16 and are directed to further limitations of the drug sample fulfillment platform described above. Claim 17 is dependent on Claim 16 and recites that the request database receives claim information when a patient redeems a print coupon or a pre-printed voucher for physical samples. Claim 18 is dependent on Claim 17 and recites that the request database produces a first report accounting for the number of coupons or vouchers redeemed by patients of the prescriber. Claim 19 is dependent on Claim 18 and recites that the request database produces a second report correlating an allocation of drug samples of a drug to the prescriber with a number of prescriptions written by the prescriber relating to the drug. Claim 20 is dependent on Claim 19 and recites that the request database produces a third report accounting for the monetary amount spent by a pharmaceutical company on the drug sample fulfillment program for a drug and a monetary amount associated with prescriptions written by the prescriber for the drug.

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Independent Claim 21 is directed to a networked system for ordering pharmaceutical sample drugs. See page 4, line 31, to page 5, line 1. The networked system comprises a drug sample fulfillment platform that comprises a drug sample Web site for mating with one or more third-party sites. See page 5, lines 1-3; page 9, lines 19-26. The mating is dependent on an exchanged transaction that includes a prescriber identifier and a partner identifier so as to open the drug sample Web site within the third-party sites instead of another third-party site. See FIGURE 2C; see page 11, lines 6-12; FIGURE 4D; page 18, lines 4-12. The drug sample Web site presents a Web page including selectable options for the prescriber to order drug samples without the use of a sales representative. Page 6, lines 19-25; page 5, lines 3-4. The time frame in which those drug samples are valid and the dosages and quantity of samples that can be ordered for the prescriber is specified by a set of brand rules. See page 17, lines 11-13; page 21, lines 29-30; page 7, lines 6-18. The time frame, dosages, and quantity are different depending on whether the prescriber is a member of one third-party site or a member of another third-party site. See page 7, lines 6-18; page 10, lines 1-8; FIGURE 2C; page 11, lines 6-12; page 18, lines 4-13.

Claims 22-25 are dependent from independent Claim 21 and are directed to further limitations of the networked system described above. Claim 22 is dependent on Claim 21 and recites that the drug samples are in a form selected from a group consisting of physical samples, print sample vouchers and coupons, and pre-printed vouchers and coupons. Claim 23 is dependent on Claim 21 and recites that the selectable options of the Web page include a quantity for each drug sample, which is specifiable by the prescriber. Claim 24 is dependent on Claim 21 and recites that the selectable options of the Web page include a delivery location to which the drug samples will be shipped. Claim 25 is dependent on Claim 21 and recites that the selectable options of the Web page include an option for printing on-demand vouchers on a printer in the office of the prescriber.

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Independent Claim 31 is directed to a method for accessing a drug sample fulfillment platform, which comprises activating a link to access the drug sample fulfillment platform from a brand Web site or another brand Web site. See page 5, lines 15-18; FIGURE 2C; page 11, lines 6-12; page 12, lines 3-7; FIGURE 4D; page 17, line 31, to page 18, line 13. The brand Web site is neither a pharma Web site nor a Web site maintaining the computer-implementable drug sample fulfillment platform. See FIGURE 4D; FIGURE 2A. The method comprises creating a transaction that includes a prescriber identifier and a partner identifier, the transaction being exchanged so that the prescriber identifier and the partner identifier open the drug sample Web site within the brand Web site and the same prescriber identifier and another partner identifier open the drug sample Web site within another brand Web site. See page 5, lines 18-20; FIGURE 2C; page 11, lines 6-12; page 18, lines 6-13; page 18, lines 10-13. The method further comprises mating the drug sample Web site to either the brand Web site or another brand Web site allowing a prescriber to navigate and order drug samples, without the use of sales representatives, only for drugs specified by the set of brand rules which include physical samples, print sample vouchers and coupons and pre-printed vouchers, and print coupons for the brand Web site of which the prescriber is a member and different physical samples, print sample vouchers/coupons and pre-printed vouchers/coupons for another brand Web site of which the prescriber is a member. See page 4, lines 5-10; page 7, lines 6-18. The method further comprises discontinuing redemptions through a pharmacy network by the drug sample fulfillment platform and disabling orders for drug samples in a sample program that has expired. See page 14, lines 18-21.

Claims 33-45 are dependent from independent Claim 31 and are directed to further limitations of the method described above. Claim 33 is dependent on Claim 31 and recites that the method causes the prescriber to register if the prescriber identifier is not found in a request

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database. Claim 34 is dependent on Claim 31 and recites, based on a segment to which the prescriber belongs, determining one or more of the following: what drug samples that are available to the prescriber; a drug sample quantity limit that is available to the prescriber; a drug sample time limit in which the drug sample quantity limit is available; the type of sample that is available to the prescriber; and the dosages available to the prescriber. Claim 35 is dependent on Claim 34 and recites receiving a selection of physical samples, the act of receiving including receiving a drug selection, a type of drug sample selection, a quantity of drug sample selection, and a delivery address. Claim 36 is dependent on Claim 35 and recites receiving a print request to print an order form capturing the drug selection, the type of drug sample selection, the quantity of drug sample selection, and the delivery address. Claim 37 is dependent on Claim 36 and recites recording the requesting activities of the prescriber in a request database. Claim 38 is dependent on Claim 34 and recites receiving a selection for pre-printed vouchers or print coupons, the act of receiving including receiving a drug selection, and a quantity of coupons to be printed. Claim 39 is dependent on Claim 38 and recites receiving a ship request to ship the pre-printed sample vouchers/coupons to a print request to print sample vouchers and coupons capturing the drug selection. Claim 40 is dependent on Claim 39 and recites requesting activities of the prescriber in a request database. Claim 41 is dependent on Claim 40 and recites receiving a request to print a first report that lists registration data of the prescriber, the requesting activities of the prescriber, and the claim data from a claim processor that is indicative of redeemed print and pre-printed sample vouchers/coupons and print coupons at pharmacies. Claim 42 is dependent on Claim 40 and recites receiving a request to print a second report that correlates drug samples of a drug distributed to the prescriber and with prescriptions written by the prescriber relating to the drug. Claim 43 is dependent on Claim 40 and recites receiving a request to print a third report that accounts for the return on investment for a monetary amount

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spent on a drug sample distribution program for a drug and the monetary amount received from prescriptions for the drug. Claim 44 is dependent on Claim 40 and recites detecting fraud by comparing the drug sample quantity limit and the time frame in which the drug sample quantity limit is available to the prescriber and the claim data which is indicative of the number of pre-printed vouchers and print coupons redeemed by patients. Claim 45 is dependent on Claim 40 and recites refining the drug sample quantity limit of the prescriber based on the number of redemptions of print or pre-printed sample vouchers and coupons associated with the prescriber.

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 6, 16, 21, and 31 were rejected under 35 U.S.C. § 112, first paragraph, because it was said that the subject matter of these claims failed to comply with the written description requirement. The Examiner further rejected Claims 1, 6, 16, 21, and 31 under 35 U.S.C. § 112, second paragraph, because it was said that the claims are indefinite. Claims 1, 2, 4, 5, 16-20, and 51 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of the teachings of a reference "MedManage Leads Shift in Drug Sampling Practices Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution" (September 17, 2001) (hereinafter "Reference 16:08"), another reference "RxCentric and MedManage Systems Partner to Expand Physician Use of Innovative Online Drug Sampling-Alliance Gives Pharmaceutical Companies Broader Physician Access to Drug Detailing and Sampling Programs" ("Reference 610") and an additional reference "Samples of The Future" ("Reference 9:025"), and further in view of the teachings of U.S. Patent Application Publication No. 2003/0120550 ("Peyrelevade et al."). Claims 6-10, 21-25, 31, 33-43, and 53-55 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of the teachings of a reference "iPhysicianNet and MedManage Systems Partner to Offer a New Electronic And Voucher Sampling Service to Thousands of U.S. Physicians" (hereinafter "Reference 20:16"); and four already cited references: (i) "For Consumers Free Samples Are a Virtual Reality: Pharmaceutical Samples Were Once Strictly Passed From Manufacturing to Physician to Patient, But Online Marketing Tactics Are Rearranging That Order" ("Reference 9:026"); (ii) "Samples of the Future" ("Reference 9:025"); (iii) "RxCentric and MedManage Systems Partner to Expand Physician Use of Innovative Online Drug Sampling-Alliance Gives Pharmaceutical Companies Broader Physician Access to Drug Detailing and Sampling Programs" ("Reference 610"); (iv) "MedManage Tracks Troublesome Pill Samples" ("Reference 635"); and (v) "MedManage

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Leads Shift in Drug Sampling Practices Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution" ("Reference 16:08"); in view of the teachings of a new patent reference, U.S. Patent Application Publication No. 2003/0120550, to Peyrelevade et al. Claim 52 was rejected under 35 U.S.C. § 103(a) in view of the teachings of "MedManage Leads Shift in Drug Sampling Practices Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution" ("Reference 16:08"); in view of the teachings of a new patent reference, Peyrelevade et al. Claim 44 was rejected under 35 U.S.C. § 103(a) as being unpatentable in view of the teachings of "RxCentric and MedManage Systems Partner to Expand Physician Use of Innovative Online Drug Sampling-Alliance Gives Pharmaceutical Companies Broader Physician Access to Drug Detailing and Sampling Programs" ("Reference 610"), and further in view of the teachings of U.S. Patent Application Publication No. 2002/0032582 ("Feeney et al.") and Peyrelevade et al.

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VII. ARGUMENT

As discussed below, the Examiner has failed to establish a *prima facie* case of obviousness. M.P.E.P. § 2143.03 requires that to establish *prima facie* obviousness of a claimed subject matter, all the claimed limitations must be taught or suggested by the prior art. The applied and cited references do not teach, among many other features, the feature of,

> a computer readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site,

as recited in independent Claim 1 and other claims, albeit in different manners. Additionally, a claimed species may be encompassed by a disclosed genus, but that fact does not by itself render the claim species obvious. See, In re Baird, 16 F.3d 380, 382, 29 U.S.P.Q.2d 1550, 1552 (Fed. Cir. 1994). Peyrelevade et al., a reference relied on by the Examiner, indicated that his invention generically

> relates to systems and methods for facilitating electronic commerce using the Internet. It may have particular benefit for enabling the same product to be sold through multiple portals using a module constructions.

See Peyrelevade et al. at Field of The Invention, Paragraph [0002]. Because "the same product" is being sold by Peyrelevade et al. through multiple portals, in the same breath, Peyrelevade et al. cannot teach or suggest "to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site."

In the recent Advisory Action of June 9, 2008, the Examiner offered that "Peyrelevade teaches customizing the products presented to a user browsing a website based upon said website branding (see paragraphs 51-52)." Those paragraphs do not support the Examiner's reasoning but instead confirm that the products are the same and that the information about the products are

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customized. This simple confusion has caused the examination to go awry. For better appreciation of the reference Peyrelevade et al., other references, and the arguments below, Appellants summarized the applied references.

A. Summary of the Cited and Applied References

1. Summary of Reference 16:08, Titled "MedManage Leads Shift in Drug Sampling Practices Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution"

Reference 16:08 is not prior art. It discusses printed vouchers that physicians retrieve on-line for patients to redeem at a pharmacy free of charge.

2. Summary of Reference 610, Titled "RxCentric and MedManage Systems Partner to Expand Physician Use of Innovative Online Drug Sampling-Alliance Gives Pharmaceutical Companies Broader Physician Access to Drug Detailing and Sampling Programs"

Reference 610 is not prior art. The Declaration of Scott M. King on January 14, 2007, indicates its irrelevancy, but acknowledgement of the Declaration was avoided by the Examiner. Reference 610 discusses "[u]nder the terms of the agreement, RxCentrix's online nationally representative communities of more than 25,000 physician members will be able to obtain drug sample vouchers online through MedManage Systems that can then be redeemed, free of charge, by their patients at more than 50,000 participating pharmacies." Yet, the Examiner never questioned whether the terms of the agreement were executed.

3. Summary of Reference 9:025, Titled "Samples of The Future"

Reference 9:025 is not prior art. The Declaration of Scott M. King on January 14, 2007, indicates its irrelevancy, but acknowledgement of the Declaration was avoided by the Examiner. Reference 9:025 discusses development of an electronic voucher system that allows physicians to order drug samples online.

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4. Summary of Peyrelevade et al.

Peyrelevade et al. is directed to a system for constructing first and second Web sites such that, using a same module, the first and second Web sites may incorporate common information while each incorporating information unique to each Web site. In this way, a brand owner might construct a single module that may be used in the Web sites of multiple resellers for selling the same product through multiple portals. A single change to the module might then update multiple reseller Web sites.

5. Summary of Reference 20:16, Titled "iPhysicianNet and MedManage Systems Partner to Offer a New Electronic And Voucher Sampling Service to Thousands of U.S. Physicians"

Reference 20:16 is not prior art. Reference 20:16 discusses a plan to allow physicians in the iPhysicianNet national network to obtain sponsoring companies' drug sample vouchers online through MedManage Systems.

6. Summary of Reference 9:026, Entitled "For Consumers Free Samples Are a Virtual Reality: Pharmaceutical Samples Were Once Strictly Passed From Manufacturing to Physician to Patient, But Online Marketing Tactics Are Rearranging That Order"

Reference 9:026 is not prior art. The Declaration of Scott M. King on January 14, 2007, indicates its irrelevancy, but acknowledgement of the Declaration was avoided by the Examiner. Reference 9:026 discusses offers of free samples directly to patients via the Internet.

7. Summary of Reference 635, Entitled "MedManage Tracks Troublesome Pill Samples"

Reference 635 is not prior art. The Declaration of Scott M. King on January 14, 2007, indicates its irrelevancy, but acknowledgement of the Declaration was avoided by the Examiner. Reference 635 discusses a plan to add an Internet component to allow a medical group to go on-line, pick and order medicines under the eMedSample program.

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8. Summary of Feeney et al.

Feeney et al. is directed to a system for dispensing medication and integrated data management which can include a medical office system with at least one computer which can be linked to at least one server and a central system through a network. The medical office computer also can communicate with at least one controlled dispenser unit, thereby regulating the dispensing of medication.

B. Rejections Under 35 U.S.C. § 112, First Paragraph

Appellants' specification describes as follows, at page 7, lines 6-18:

> After the brand manager 204 has selected a group of prescribers 210, the brand manager 204 produces a set of brand rules 206 which define the availability of drug samples to each of the prescribers 210. The set of brand rules 206 may cause one prescriber's drug sample availability and characteristics to be different from those of another prescriber. Thus, for each prescriber there is a virtual drug sample cabinet tailored specifically for that prescriber. Preferably, the group of prescribers 210 is divided into segments. The brand rules provide personalization and customization for each segment. Many other personalization capabilities to tailor the distribution of drug samples to prescribers 210 are possible, such as various delivery methods; various drug strengths; trademark and local presentation of drug samples; customized drug disclaimers; specific product, package, and brand Web sites; and facilitating the scheduling of prescriber interactions with sales representatives or medical science liaisons.

Thus, brand Web sites, as a segment, can facilitate personalization and customization depending on the brand rules, and brand rules include that "which define the availability of drug samples to each of the prescribers," as recited above. This description of Appellants' specification among other disclosure supports "set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site," as recited in Claim 1.

Yet, the Examiner requires much more from the Appellants by asking that "[t]he Applicant needs to point to the Examiner where in the Applicant's specification said limitations are recited." In other words, the Examiner wants a verbatim recitation from the specification to support limitations in the claims. This is improper and there is no legal support for such a requirement by the Examiner. Even the M.P.E.P. § 2163 explains as follows:

> Capon v. Eshhar, 418 F.3d 1349, 1357, 76 USPQ2d 1078, 1085 (Fed. Cir. 2005)("The 'written description' requirement must be applied in the context of the particular invention and the state of the knowledge . . . . As each field evolves, the balance also evolves between what is known and what is added by each inventive contribution."). If a skilled artisan would have understood the inventor to be in possession of the claimed subject matter at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met. See, e.g., Vas-Cath, 935 F.2d at 1563, 19 USPQ2d at 1116; Martin v. Johnson, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating "the description need not be in ipsis verbis [i.e., "in the same words"] to be sufficient").

Because the Examiner requires the same words to appear in the specification to support claim limitations, the Examiner has failed to state a proper 35 U.S.C. § 112 rejection. In the recent Advisory Action of June 9, 2008, the Examiner explained as follows:

> The Examiner answers that Applicant's specification only mentions the term "brand website" in Applicant's specification page 7 where it recites "many other personalization capabilities to tailor the distribution of drug samples to prescribers are possible, such as brand website." Applicant's specification does not mention anything else with respect to brand website.

That is inaccurate. The term "brand Web site" appears in the following paragraph about causing at page 7, lines 6-18:

> After the brand manager 204 has selected a group of prescribers 210, the brand manager 204 produces a set of brand rules 206 which define the availability of drug samples to each of the prescribers 210. The set of brand rules 206 may cause one prescriber's drug sample availability and characteristics to be different from those of another prescriber. Thus, for

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> each prescriber there is a virtual drug sample cabinet tailored specifically for that prescriber. Preferably, the group of prescribers 210 is divided into segments. The brand rules provide personalization and customization for each segment. Many other personalization capabilities to tailor the distribution of drug samples to prescribers 210 are possible, such as various delivery methods; various drug strengths; trademark and local presentation of drug samples; customized drug disclaimers; specific product, package, and brand Web sites; and facilitating the scheduling of prescriber interactions with sales representatives or medical science liaisons.

Thus, a segment can facilitate personalization and customization depending on the brand rules. See the fourth sentence above. A brand Web site is a segment. See the fourth and fifth sentences above. Brand rules include that "which define the availability of drug samples to each of the prescribers," as recited above a the first sentence. This description of Appellants' specification among other disclosure supports "set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site," as recited in Claim 1.

The Examiner would like to take his tweezers to limit the explanation to the one sentence that brand Web sites were first mentioned. One with ordinary skills in language would understand that a sentence is a syntactic unit of language that has some relationship to other sentences near it as well as elsewhere in a document, such as a patent application. One just would not read a sentence alone and then give up. For example, a brand Web site is mentioned at a different point as a Web portal identified by a partner identifier at page 11, lines 10-12:

> FIGURE 2C illustrates another embodiment of the drug sample fulfillment platform 208. The prescriber 210 accesses a drug sample Web site 230 preferably via a Web portal. By selecting a link on the Web portal, the prescriber 210 generates a transaction that includes at least two pieces of information: a prescriber identifier and a partner identifier. The prescriber identifier uniquely identifies the prescriber 210 whereas the partner

> identifier identifies the Web portal from which the prescriber 210 selects the link to connect to the drug sample Web site 230.

The partner identifier is used by the brand rules to customize drug samples availability and characteristics to the prescriber who is a member of a certain Web portal. Appellants repeat that the Examiner wants a verbatim recitation from the specification to support limitations in the claims. This is improper and there is no legal support for such a requirement by the Examiner.

C. Rejections Under 35 U.S.C. § 112, Second Paragraph

The Examiner indicated that the underlined portions of the claim limitation "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site," as recited by Claim 1 among other claims, is indefinite. To understand what is meant by indefinite, M.P.E.P. § 2173.02 explains as follows:

> *See* . . . Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings, 370 F.3d 1354, 1366, 71 USPQ2d 1081, 1089 (Fed. Cir. 2004) ("The requirement to 'distinctly' claim means that the claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct principles . . . . Only when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite.").
>
> Accordingly, a claim term that is not used or defined in the specification is not indefinite if the meaning of the claim term is discernible. Bancorp Services, L.L.C. v. Hartford Life Ins. Co., 359 F.3d 1367, 1372, 69 USPQ2d 1996, 1999-2000 (Fed. Cir. 2004) (holding that the disputed claim term "surrender value protected investment credits" which was not defined or used in the specification was discernible and hence not indefinite because "the components of the term have well recognized meanings, which allow the reader to infer the meaning of the entire phrase with reasonable confidence").

The claim limitation at issue is "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and

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characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site," as recited by Claim 1. By rejecting this claim limitation as indefinite, the Examiner is indicating that the claim is without a discernible meaning. This surely is incorrect.

The claim limitation plainly explains that there is a prescriber. There is also drug sample availability and characteristics. That drug sample availability and characteristics can be associated with the prescriber while that prescriber is a member of one brand Web site. Furthermore, that drug sample availability and characteristics are different if the same prescriber is a member of another brand Web site. It is unclear to Appellants why the Examiner would say that there is no discernible meaning in the recited claim limitation. Unless of course, it is for the purpose of shoehorning the claim limitation in a way that facilitates the use of Peyrelevade et al.: "For purpose of art rejection, said limitation would be interpreted as customizing a website displayed to a customer based upon the brand of said website and based upon said customer's profile and also outsourcing the payment for products in said website." See page 3 of the final Office Action, dated December 12, 2007.

That is improper. *See* In re Steele, 305 F.2d 859,134 USPQ 292 (CCPA 1962) (it is improper to rely on speculative assumptions regarding the meaning of a claim and then base a rejection under 35 U.S.C. § 103 on these assumptions). Given the assumption of the Examiner, clearly there are some discernible meanings. But since 1962, an indefinite rejection under 35 U.S.C.§ 112, second paragraph, has been unavailable to the Examiner for the purpose of shoehorning the claim limitation so that it somehow fits within a reference, such as Peyrelevade et al. The subject matter of the claimed subject matter has to do with drug samples, which are available for free to prescribers.

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Thus, there is no need for "outsourcing the payment for products in said website" as required by Peyrelevade et al. Peyrelevade et al. is directed to a software module for use in constructing different Web sites so that each Web site may incorporate common information while also incorporating information unique to the Web site to sell the same product, such as lipsticks. Peyrelevade et al. allows a brand owner to construct a single software module that may be used in the Web sites of multiple resellers. As Appellants have indicated previously, drug samples are available for free to prescribers. Additionally, it is a bizarre interpretation that lipsticks or other beauty products can be construed as drug samples. No one skilled in the art of pharmacology would mistake drug samples as lipsticks or other beauty products. This is the sort of speculative assumption that is inappropriate.

In the Advisory Action of June 9, 2008, the Examiner offered as follows:

> The Applicant argues that it is a bizarre interpretation that lipstick or other beauty products can be construed as drug samples. The Examiner answers that Peyrelevade was used by the Examiner to simply teach that it is old and well known in the promotion art to customize the products presented to a user browsing a website based upon the brand of said website. Therefore, Peyrelevade is relevant to Applicant's claimed subject matter. (Emphasis provided.)

Appellants' subject matter is related to a set of brand rules causing a prescriber's drug sample availability and characteristics to be different whereas Peyrelevade et al. customizes, not products, but information of the same product.

The Examiner continues the fiction that Peyrelevade et al. customizes the products. Even Paragraphs [0051-0052] relied on by the Examiner do not support his arguments:

> [0051] Although consumers 2100a, 2100b may browse reseller websites 2500a, 2500b for the same brand of lipstick associated with the supplier website 2700, the first consumer 2100a may access the cosmetic product information from the reseller website 2500a, and the second consumer 2100b may access the cosmetic product information from a different reseller website 2500b. When that is the case, the supplier website 2700

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> may use a module to provide information, such as cosmetic product information describing the lipstick, that is customized to the context (or origin) of each request. In one aspect of the invention, the supplier 2700 controls the module and thus controls the product brand.
>
> [0052] In one aspect of the invention, the first reseller website 2500a may be a retailer's website in Japan, and the second reseller 2500b may be a retailer's website in the United States. Although the consumers 2100a, 2100b request the same product (e.g., the supplier's lipstick), the product information provided to each consumer 2100a, 2100b may be customized. For the retailer's website in Japan (i.e., the first reseller 2500a), the supplier website 2700 may provide information, such as an image of a model wearing lipstick, an image of the lipstick case, and a text description of the lipstick in Japanese. On the other hand, for the retailer's website in the United States (i.e., the second reseller 2500b), the supplier website 2700 may provide information, such as an image of a model wearing lipstick, an image of the lipstick case, and a text description of the lipstick in English. As a result, the supplier website 2700 customizes the information provided to each of the websites by providing information unique to each of the websites while also providing information that is common to both websites.

In Paragraph [0051], Peyrelevade et al. explains that the same brand of lipstick (from a supplier Web site) is being sold by two reseller Web sites, and that the supplier Web site may use a module to provide information, such as cosmetic product information describing the lipstick, that is customized to one or the other reseller Web site. To repeat for emphasis, it is the information that is customized---not the lipstick. In other words, if the clause between the commas in Paragraph [0051] were to be removed from its role in modifying the noun "information," the resultant sentence would read: "When that is the case, the supplier website 2700 may use a module to provide information . . . that is customized to the context (or origin) of each request."

Similarly, Paragraph [0052] is about customizing information, not product: "Although the consumers 2100a, 2100b request the same product (e.g., the supplier's lipstick), the product information provided to each consumer 2100a, 2100b may be customized." For example, a

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customer accessing a retailer Web site in Japan may see information about the lipstick in Japanese, whereas a customer accessing a retailer Web site in the U.S. may see information about the lipstick in English. There was no need for the Examiner to suffer misinterpretation of Peyrelevade et al. since even the very first paragraph of Peyrelevade et al.'s patent application at his Field of The Invention describes the invention of Peyrelevade et al. as follows:

> [0002] The invention relates to systems and methods for facilitating electronic commerce using the Internet. It may have particular benefit for enabling the same product to be sold through multiple portals using a modular construction.

D. Rejections Under 35 U.S.C. § 103(a)

Some claims rejected under 35 U.S.C. § 103(a) require a feature recited in Claim 1 albeit described in different manners. For example, the claimed subject mater recites a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site. As another example, the claimed subject matter recites the mating of the computer-implementable drug sample fulfillment platform with either the brand Web site or the another brand Web site depending on an exchanged transaction that includes a prescriber identifier and a partner identifier so as to open the computer-implementable drug sample fulfillment platform within the brand Web site or the another brand Web site. The non-patent references are improper references. Peyrelevade et al. discusses customizing of information to sell the same product whereas the claimed subject matter recites causing a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site. The sections below explain these issues in greater details.

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1. Independent Claim 1

Independent Claim 1 succinctly defines a system for promoting pharmaceutical drugs. The system comprises a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site. The system further comprises a computer-implementable drug sample fulfillment platform that is Web-based for implementing the set of brand rules to allow a prescriber to obtain drug samples to dispense to a patient without the use of a sales representative. The system also comprises the mating of the computer-implementable drug sample fulfillment platform with either the brand Web site or the another brand Web site depending on an exchanged transaction that includes a prescriber identifier and a partner identifier so as to open the computer-implementable drug sample fulfillment platform within the brand Web site or the another brand Web site. The system additionally comprises that the computer-implementable drug sample fulfillment platform electronically notifies the prescriber about the availability of drug samples, the brand Web sites being neither a pharma Web site nor a Web site maintaining the computer-implementable drug sample fulfillment platform.

a. The Examiner Has Failed to State a *Prima Facie* Case of Obviousness Because He Has Not Shown That Every Single Claim Limitation Is Taught or Suggested by the Applied and Cited References

To establish *prima facie* obviousness of a claimed subject matter, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). As discussed above, none of the claim limitations in Claim 1 are taught or suggested by the Reference 16:08, entitled "MedManage Leads Shift in Drug Sampling Practices

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Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution," and Peyrelevade et al., alone or in combination, both of which Appellants specifically deny. None of them teaches or suggests at least the feature of:

> a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site

as recited by Claim 1. In the Final Office Action, the Examiner conceded that the Reference 16:08 neither teaches nor suggests the above cited claimed limitation except that somehow the Reference 16:08 teaches the computer-readable set of brand rules. However, the Examiner indicated that Peyrelevade et al. teaches or suggests the claimed feature at Paragraphs [0009-0011, 0082, 0083, and 0089]. The Examiner is wrong. Appellants have looked everywhere in the Reference 16:08 and are unable to find where "brand rules" are taught or suggested. Appellants also have reviewed Peyrelevade et al. and what he teaches is the customization of information—not products.

Peyrelevade et al. explains what his invention is about at his Field of the Invention:

> [0002] The invention relates to systems and methods for facilitating electronic commerce using the Internet. It may have particular benefit for enabling the same product to be sold through multiple portals using a modular construction.

The thrust of Peyrelevade et al. is to sell the same product through multiple portals and not to customize the product, as styled by the Examiner so as to reject Appellants' claimed subject matter. None of the paragraphs cited by the Examiner is inconsistent with the fact that Peyrelevade et al. is selling the same product albeit with different pieces of information. Paragraph [0009] of Peyrelevade et al. discusses as follows:

> [0009] More specifically, systems and methods consistent with the present invention facilitate modular construction of at least portions of first and

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> second websites configured to offer for sale at least one common product. Moreover, systems and methods consistent with the present invention may define at least one module for containing a first set of information for incorporation into a first website, an alternative second set of information for incorporation into the second website, a third set of information for incorporation into both the first and second websites, and rules governing how the first, second, and third sets of information are to be incorporated into the first and second websites.

Nothing about the above passage of Peyrelevade et al. teaches or suggests that "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site" as recited by Claim 1. In that paragraph above, Peyrelevade et al. teaches the sale of a "common product." He also teaches defining two different sets of information, one for a first Web site and another for a second Web site. Appellants are unable to find where the common product is customized.

Paragraph [0010] of Peyrelevade et al. discusses as follows:

> [0010] At least two modes may be assigned to the module. In a first mode, rules in the module may cause the first and third sets of information to be incorporated into the first website while the second set of information is prevented from being displayed. In a second mode, the rules may cause the second and third sets of information to be incorporated into the second website while the first set of information is prevented from being displayed.

Paragraph [0010] is about incorporation of information into a Web site. Nothing about it teaches or suggests that "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site," as recited by Claim 1.

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Paragraph [0011] of Peyrelevade et al. discusses as follows:

> [0011] The preceding summary is merely intended to provide the reader with a very brief flavor of a few aspects of the invention, and is not intended to restrict in any way the scope of the claimed subject matter. In addition, it is to be understood that both the foregoing general description and the following detailed description are exemplary and explanatory only and are not restrictive of the invention, as claimed.

Paragraph [0011] contains a ridiculously broad statement that is empty in contents. One with ordinary skill in the art cannot read that paragraph to make or use anything, much less "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site" as recited by Claim 1.

Paragraph [0082] of Peyrelevade et al. discusses as follows:

> [0082] The computing platform 3300 may also determine the consumer, such as the consumer 2100a, (step 6400) by evaluating the address associated with the request. For example, the request may include an IP address that identifies the consumer 2100a. On the other hand, to identify the consumer 2100a, the computing platform 3300 may read a cookie on the processor associated with the consumer 2100a or require the consumer 2100a to register (or login) with the computing platform 3300.

Paragraph [0082] explains that a consumer, who wishes to buy lipsticks, can be identified by an internet protocol address or by reading an electronic token called a "cookie" on the consumer's computer. But Paragraph [0082] has nothing to do with "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site" as recited by Claim 1. A prescriber is not a consumer that buys lipsticks. The drug samples are available for free to the

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prescriber. Drug samples can only be prescribed by someone who is authorized to prescribe drugs. Anyone can buy lipsticks.

Paragraph [0083] of Peyrelevade et al. discusses as follows:

> [0083] To determine a profile for the request (step 6500), the computing platform 3300 may first determine an IP address for the request. Based on the IP address, the computing platform 3300 may then determine a profile for the request that further describes the consumer 2100a and/or the consumer's purchasing history. Moreover, the determined profile may include information describing the consumer's age, income, gender, and residence. For example, the computing platform 3300 may receive a request with an IP address for the consumer 2100a; and then retrieve information stored in a database (e.g., database 3600) that describes the consumer 2100a. Alternatively, a retail website may directly provide information describing the consumer (e.g., age, gender, income, location). In one aspect of the invention, the computing platform 3300 may retrieve past purchasing information for the consumer 2100a. Alternatively, the computing platform 3300 may retrieve demographic information describing the consumer 2100a, such as a household income for the consumer 2100a and/or a median household income for consumer's area (e.g., zip code). By using a profile, the computing platform 3300 may further determine the context of the request, permitting a module at the supplier website 2700 to further customize the information provided to a reseller website and/or a consumer 2100a.

There is a lot of information provided by Paragraph [0083], but the essence of the paragraph is given in its last sentence: "By using a profile, the computing platform 3300 may further determine the context of the request, permitting a module at the supplier website 2700 to further customize the information provided to a reseller website and/or a consumer 2100a." To repeat for emphasis, the purpose of the profile is to customize information, not product, by Peyrelevade et al. Thus, Paragraph [0083] has nothing to do with "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site," as recited by Claim 1.

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Paragraph [0089] of Peyrelevade et al. discusses as follows:

> [0089] In one aspect of the invention, the computing platform 3300 may also define rules (or code) that include business rules for customizing content based on context. Moreover, the computing platform 3300 may define the business rules to include a list of products offered by a retailer (e.g., retail website 2500a). The computing platform 3300 may use the business rules to access a retailer's product list (or catalog), enabling display of only products offered by the retailer.

The above paragraph discusses "customizing content based on context" but not customizing products. The products offered are the same. Thus, Paragraph [0089] has nothing to do with "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site" as recited by Claim 1.

The Examiner is reminded that "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). Claim 1 requires that "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site," among other features. The essence of Peyrelevade et al. is to work with the same products and, depending on the Web site, offers different information.

Given the multiple repetitions of the express teaching of Peyrelevade et al. to customize information and not product, the preference of Peyrelevade et al. to sell the same products, and the contrary claim language, it is unclear why the Examiner would use Peyrelevade et al. for the proposition of "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of

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one brand Web site to be different from the same prescriber while a member of another brand Web site," among other features.

b. After Conceding That The Non-Patent References Failed to Teach or Suggest the Claimed subject matter, the Examiner Attempted to Modify These References With Peyrelevade et al. but the Proposed Modification Would Render All References Unsatisfactory for Their Intended Purposes

If a proposed modification would render a prior art invention being modified unsatisfactory for its intended purpose, then *prima facie* obviousness has not been established. *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984) (Claimed device was a blood filter assembly wherein both the inlet and outlet for the blood were located at the bottom end of the filter assembly, and wherein a gas vent was present at the top of the filter assembly. The prior art reference taught a liquid strainer for removing dirt from gasoline wherein the inlet and outlet were at the top of the device, and wherein a stopcock was located at the bottom of the device for periodically for removing collected dirt. The Board concluded that the claims were *prima facie* obvious to turn the prior art device upside down. The Court reversed, finding that if the prior art device was turned upside down it would be inoperable for its intended purpose because the gasoline to be filtered would be trapped at the top).

To cure a defect of the non-patent references, the Examiner would like to combine Peyrelevade et al. with the non-patent references, all of which Appellants deny. As previously discussed, Peyrelevade et al. specifically teaches selling the same products and customizing information, not products. See, for example, Claim 11 ("wherein the at least one common product is at least one of a lipstick, lipliner, an eyeliner, an eye shadow, a blush, a concealer, a base, a mascara, an anti-wrinkle product, an anti-aging product, a tanning product, a cleansing product, a hair product, and a beauty care product"); Claims 21, and 31-32 ("to offer for sale, in at least two differing languages, the same product, while at the same time causing incorporation into each website information unique to each website"); the Field of The Invention of

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Peyrelevade et al., in the second sentence ("for enabling the same product to be sold through multiple portals using a modular construction"); Paragraph [0009] ("configured to offer for sale at least one common product"); Paragraph [0052 ("the consumers 2100a, 2100b request the same product (e.g., the supplier's lipstick), the product information provided to each consumer 2100a, 2100b may be customized").

The Examiner explains that the claimed feature has been disclosed because "Peyrelevade was used by the Examiner to simply teach that it is old and well known in the promotion art to customize the products presented to a user browsing a website based upon the brand of said website." See the Advisory Action at page 2. Appellants are unable to understand this conclusion of the Examiner. If the claimed subject matter recites "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site," and Peyrelevade et al. prefers that the same product be sold while information about it is customized, one would think that the only logical conclusion is that Peyrelevade et al. teaches precisely away from the claimed subject matter in that Peyrelevade et al. prefers to sell the same product, whereas the claimed subject matter does not. Instead, the Examiner discovered another conclusion that Peyrelevade et al. teaches the claimed subject matter because Peyrelevade et al. customizes products. This cannot be harmonized with Peyrelevade et al.'s explicit preference to sell the same product.

Thus, to combine the non-patent references, Peyrelevade et al.'s preference of selling the same product must be abandoned, and the combination would render Peyrelevade et al. inoperable. Thus, no *prima facie* case of obviousness has been established by the Examiner.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claim 1, as if the discussed arguments were set forth here in full.

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c. Instead of Following the Law That Requires That a Prior Art Reference Be Considered in Its Entirety, i.e., as a Whole, Including Portions That Would Lead Away From the Claimed subject matter, the Examiner has Chosen to Use Those Portions As Support

M.P.E.P. § 2141.02 teaches that prior art must be considered in its entirety, including disclosures that teach away from the claims. *See W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). The claimed subject matter requires that "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site," as recited in Claim 1. Instead of explaining portions of Peyrelevade et al. that teach opposite to the claimed subject matter, the Examiner relied upon it, at paragraph [0051] of Peyrelevade et al.:

> [0051] Although consumers 2100a, 2100b may browse reseller websites 2500a, 2500b for the same brand of lipstick associated with the supplier website 2700, the first consumer 2100a may access the cosmetic product information from the reseller website 2500a, and the second consumer 2100b may access the cosmetic product information from a different reseller website 2500b. When that is the case, the supplier website 2700 may use a module to provide information, such as cosmetic product information describing the lipstick, that is customized to the context (or origin) of each request. In one aspect of the invention, the supplier 2700 controls the module and thus controls the product brand.

As noted above, lipstick consumers of Peyrelevade et al. can buy the same brand of lipstick but are exposed to information that is customized. The claimed subject matter requires that a computer-readable set of brand rules guides a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site. There can be no justification for the Examiner to use the portions of Peyrelevade et al. that teach

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away from the claimed subject matter for the very purpose of supporting a disclosure of the claimed subject matter based on Peyrelevade et al.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claim 1, as if the discussed arguments were set forth here in full.

d. The Examiner Has Utterly Failed to Consider the Claimed subject matter as a Whole and Therefore Cannot State a *Prima Facie* Case of Obviousness

In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed subject matter as a whole would have been obvious. *Stratoflex, Inc. v. AeroQuip Corp.*, 713 F.2d 1530, 218 U.S.P.Q. 871 (Fed. Cir. 1983); *Schenk v. Nortron Corp.*, 713 F.2d 782, 218 U.S.P.Q. 698 (Fed. Cir. 1983). The Examiner dissected the claimed subject matter to its detriment and failed to consider the claimed subject matter as a whole, as required by the law. Referring to page 4 of the final Office Action where such a dissection took place. For example, as a whole, the claimed subject matter requires that the computer-implementable drug sample fulfillment platform electronically notifies the prescriber about the availability of drug samples, as recited in Claim 1. Instead of showing this, and other things, to treat the claimed subject matter as a whole, the Examiner pointed to the non-patent reference 16:08, entitled "MedManage Leads Shift in Drug Sampling Practices Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution":

> MedManage has also enhanced functionality of the eMedSample site, including an online registration process in which doctors can go to www.eMedSample.com and click on a link to register, improved navigation and the option to request information on samples that are not on their formulary.

There is absolutely nothing in the paragraph above that indicates that the computer-implementable drug sample fulfillment platform electronically notifies the prescriber

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about the availability of drug samples, as required by the claimed subject matter. The above paragraph discusses having doctors go to a Web site of MedManage, which teaches contrary to the claimed feature "the brand Web sites being neither a pharma Web site nor a Web site maintaining the computer-implementable drug sample fulfillment platform," as recited by Claim 1. But more importantly, request for information, under no reasonable interpretation, means the computer-implementable drug sample fulfillment platform electronically notifies the prescriber about the availability of drug samples.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claim 1 as if the discussed arguments were set forth here in full.

e. The Examiner Combines non-patent references and Peyrelevade et al. to Produce Something Else Whereas Obviousness Can Only Be Established by Combining or Modifying the Teachings of the Prior Art to Produce the Claimed subject matter.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed subject matter where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves, or in the knowledge generally available to one of ordinary skill in the art. *See*, *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000). The Examiner has insisted on a combination of the non-patent reference 16:08, entitled "MedManage Leads Shift in Drug Sampling Practices Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution" with Peyrelevade et al. that does not result in the claimed subject matter. See page 5 of the final Office Action.

The claimed subject matter requires that the a computer-readable set of brand rules guides a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site. The non-patent references discuss allowing doctors

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to go to a Web site for maintaining the computer-implementable drug sample fulfillment platform. See the fifth paragraph of the non-patent reference 16:08, entitled "MedManage Leads Shift in Drug Sampling Practices Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution." Peyrelevade et al. teaches selling of the same product using customized information. The combination of the non-patent references and Peyrelevade et al. would yield a result where doctors can go on-line to order the same lipstick product where information will be customized. This result is not the claimed subject matter. Thus, the Examiner has failed to state a *prima facie* case of obviousness.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claim 1, as if the discussed arguments were set forth here in full.

f. Instead of Giving the Claimed subject matter the Broadest Reasonable Interpretation Consistent With the Specification, the Examiner Gave Both the Non-Patent References and Peyrelevade et al. the Broadest, Most Unreasonable Interpretation

M.P.E.P § 2131.01 provides that "[d]uring patent examination, the claims are given the broadest reasonable interpretation consistent with the specification," (emphasis provided) citing favorably, *In re Morris*, 127 F.3d 1048, 44 U.S.P.Q.2d 1023 (Fed. Cir. 1997). The specification referred to by the M.P.E.P. is the specification of the pending patent application being examined by the Examiner and not the applied reference, such as the non-patent references and Peyrelevade et al. The system of Peyrelevade et al. is directed to selling the same product and has nothing to do with a computer-readable set of brand rules guides a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site. The non-patent reference 16:08, entitled "MedManage Leads Shift in Drug Sampling Practices Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution" discusses allowing doctors to go to a Web site maintaining the

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computer-implementable drug sample fulfillment platform to request for information. This is in contrast to the teachings of the claimed subject matter because its purpose is to allow the brand Web sites that are neither a pharma Web site nor a Web site maintaining the computer-implementable drug sample fulfillment platform to electronically notify the prescriber about the availability of drug samples.

The problem is that the Examiner broadly interprets the non-patent references and Peyrelevade et al. to reject the claimed subject matter. But that is not how the Examiner is supposed to treat the references. The non-patent reference 16:08, entitled "MedManage Leads Shift in Drug Sampling Practices Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution" discusses allowing doctors to go to a Web site maintaining the computer-implementable drug sample fulfillment platform to request for information. This explicit discussion of the non-patent reference is reinterpreted by the Examiner to mean that doctors can go to a Web site that is "neither a pharma Web site nor a Web site maintaining the computer-implementable drug sample fulfillment platform," and on top of that, requesting of information by the doctors is reinterpreted into the computer-implementable drug sample fulfillment platform to electronically notifying the prescriber about the availability of drug samples. No reasonable interpretation of the claims can produce an outcome so erroneous.

But there is more. Peyrelevade et al. teaches selling the same product while customizing information. This very explicit teaching gets reinterpreted somehow into a teaching of customizing the product. Thus, no *prima facie* case of obviousness has been established by the Examiner.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claim 1, as if the discussed arguments were set forth here in full.

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g. The Fact That a Claim Species or Sub-Genus Is Encompassed by the Prior Art Genus Is Not Sufficient by Itself to Establish a *Prima Facie* Case of Obviousness.

In other words, a claimed species may be encompassed by a disclosed genus, but that fact does not by itself render the claim species obvious. *See, In re Baird*, 16 F.3d 380, 382, 29 U.S.P.Q.2d 1550, 1552 (Fed. Cir. 1994). Clearly, the shortcomings of the non-patent references, such as the non-patent reference 16:08, Entitled "MedManage Leads Shift in Drug Sampling Practices Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution," are apparent. So the Examiner resorted to using Peyrelevade et al. to teach a generic system as discussed at Paragraphs [0051-0052] of Peyrelevade et al.

Paragraph [0051] of Peyrelevade et al. teaches as follows:

> [0051] Although consumers 2100a, 2100b may browse reseller websites 2500a, 2500b for the same brand of lipstick associated with the supplier website 2700, the first consumer 2100a may access the cosmetic product information from the reseller website 2500a, and the second consumer 2100b may access the cosmetic product information from a different reseller website 2500b. When that is the case, the supplier website 2700 may use a module to provide information, such as cosmetic product information describing the lipstick, that is customized to the context (or origin) of each request. In one aspect of the invention, the supplier 2700 controls the module and thus controls the product brand.

The Examiner has proposed that Peyrelevade et al. discloses the following genus: "The Examiner answers that Peyrelevade was used by the Examiner to simply teach that it is old and well known in the promotion art to customize the products presented to a user browsing a website based upon the brand of said website." See page 2 of the Advisory Action dated June 9, 2008. Assuming for the sake of argument only that such a generic teaching is taught by Peyrelevade et al., it cannot render obvious the claimed subject matter, which teaches a species in that a computer-readable set of brand rules guides a distribution of drug samples of a drug to

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cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site.

As stated in the Field of The Invention of Peyrelevade et al., and among other places, the thrust of the system of Peyrelevade et al. is for selling the same product, such as lipstick, lipliner, an eyeliner, an eye shadow, a blush, a concealer, a base, a mascara, an anti-wrinkle product, an anti-aging product, a tanning product, a cleansing product, a hair product, and a beauty care product. See his Claim 11. It has nothing to do with a computer-readable set of brand rules guides a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site. Because the Examiner has failed to appreciate that a generic teaching cannot render obvious a claimed species, no *prima facie* case of obviousness has been established by the Examiner.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claim 1, as if the discussed arguments were set forth here in full.

2. Dependent Claim 2

Claim 2 is dependent on Claim 1 and recites that drug samples include physical samples. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter. For example, the non-patent reference 16:08, entitled "MedManage Leads Shift in Drug Sampling Practices Online Vouchers; Pharmaceutical Marketers Turn to eMedSample to Monitor Free Sample Distribution" discusses vouchers not physical samples.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claim 1 as if the discussed arguments were set forth here in full.

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3. Dependent Claim 4

Claim 4 is dependent on Claim 1 and recites that drug samples include a coupon printed in the office of the prescriber, which is networked to the drug sample fulfillment platform. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter. For example, no drug sample fulfillment platform as described by Claim 1 was found.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claim 1 and dependent Claim 2 as if the discussed arguments were set forth here in full.

4. Dependent Claim 5

Claim 5 is dependent on Claim 4 and recites that the drug sample vouchers, which are in a printed form, are redeemable at a pharmacy. Redeemed data is generated by the drug sample fulfillment platform for refining the brand rules so as to better guide allocation and distribution of the drug samples. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter. There are no refinements that Appellants can find.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claim 1 and dependent Claims 2 and 4 as if the discussed arguments were set forth here in full.

5. Independent Claim 6

Independent Claim 6 is directed to a system for distributing pharmaceutical drugs. The system comprises a drug sample fulfillment platform that comprises a drug sample Web site for mating with one or more third party sites depending on an exchanged transaction that includes a prescriber identifier and a partner identifier so as to open the drug sample Web site within the

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party site instead of another third party site, for accessing drug sample services without the use of a sales representative. The system further comprises a first set of Web pages coupled to the drug sample fulfillment platform through which a prescriber can access the drug sample fulfillment platform to order drug samples if a set of brand rules which specify drug sample availability and characteristics for the prescriber permits the prescriber to access the drug sample fulfillment platform. The system further comprises the set of brand rules that causes the drug samples available to the prescriber, who is a member of the one third party Web site, to be different from the available drug samples of the another third party site. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter. For example, Appellants are unable to find where the cited references teach or suggest:

> a first set of Web pages coupled to the drug sample fulfillment platform through which a prescriber can access the drug sample fulfillment platform to order drug samples if a set of brand rules which specify drug sample availability and characteristics for the prescriber permits the prescriber to access the drug sample fulfillment platform.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claim 1 and dependent Claims 2, 4, and 5, as if the discussed arguments were set forth here in full.

6. Dependent Claim 7

Claim 7 is dependent on Claim 6 and recites that a second set of Web pages coupled to the drug sample fulfillment platform through which a sales representative can access the drug sample fulfillment platform to print sample vouchers coupons. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1 and 6 and dependent Claims 2, 4, and 5 as if the discussed arguments were set forth here in full.

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7. Dependent Claim 8

Claim 8 is dependent on Claim 6 and recites a third set of Web pages coupled to the drug sample fulfillment platform through which a patient can access the drug sample fulfillment platform to obtain sample vouchers and coupons. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1 and 6 and dependent Claims 2, 4, 5, and 7 as if the discussed arguments were set forth here in full.

8. Dependent Claim 9

Claim 9 is dependent on Claim 6 and recites that the first set of Web pages display a list of drug samples available to the prescriber to order drug samples in a form selected from a group consisting of physical samples, pre-printed vouchers, and print on-demand sample vouchers and coupons. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter. For example, Appellants are unable to find where the cited references permit access to physical samples, pre-printed vouchers, and print on-demand sample vouchers together.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1 and 6 and dependent Claims 2, 4, 5, 7, and 8 as if the discussed arguments were set forth here in full.

9. Dependent Claim 10

Claim 10 is dependent on Claim 6 and recites that the first set of Web pages display a list of the order history of the prescriber. The list includes a date, drug samples, dosages, and quantity ordered by the prescriber. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

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Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1 and 6 and dependent Claims 2, 4, 5, and 7-9 as if the discussed arguments were set forth here in full.

10. Independent Claim 16

Independent Claim 16 is directed to a drug sample fulfillment platform. The drug sample fulfillment platform comprises a drug sample Web site for mating with a brand Web site or another brand Web site that is selected from a group consisting of prescriber-oriented Web portals providing direct or indirect access to drug and/or general medical information, an e-Detailing service, a Web site regarding a drug brand or group of brands, and an online physician learning site. The mating is dependent on an exchanged transaction that includes a prescriber identifier and a partner identifier so as to open the drug sample Web site within the brand Web site instead of another brand Web site. The drug sample fulfillment platform of Claim 16 additionally recites a request database for receiving requests of a prescriber to the drug sample Web site for drug samples. The request database responds to the prescriber by allowing the prescriber to print sample vouchers or coupons or to print an order form for physical samples or pads of pre-printed vouchers, without the use of a sales representative. A set of brand rules allows the prescriber while a member of the brand Web site to receive a set of drug samples in the form of print sample vouchers and coupons, order forms for physical samples, or pads of pre-printed vouchers and in dosages and quantities different from another set of drug samples, dosages and quantities, while the prescriber is a member of another brand Web site. The drug sample fulfillment platform electronically notifies the prescriber when the prescriber has not ordered drug samples for a certain amount of time. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter. Appellants are unable to find where the cited references teach or suggest the drug sample

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fulfillment platform electronically notifies the prescriber when the prescriber has not ordered drug samples for a certain amount of time.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1 and 6 and dependent Claims 2, 4, 5, and 7-10 as if the discussed arguments were set forth here in full.

11. Dependent Claim 17

Claim 17 is dependent on Claim 16 and recites that the request database receives claim information when a patient redeems a print coupon or a pre-printed voucher for physical samples. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter. For example, no request database can be found in the cited references.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, and 16 and dependent Claims 2, 4, 5, and 7-10 as if the discussed arguments were set forth here in full.

12. Dependent Claim 18

Claim 18 is dependent on Claim 17 and recites that the request database produces a first report accounting for the number of coupons or vouchers redeemed by patients of the prescriber. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter. For example, no request database can be found in the cited references.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, and 16 and dependent Claims 2, 4, 5, 7-10, and 17 as if the discussed arguments were set forth here in full.

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13. Dependent Claim 19

Claim 19 is dependent on Claim 18 and recites that the request database produces a second report correlating an allocation of drug samples of a drug to the prescriber with a number of prescriptions written by the prescriber relating to the drug. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter. For example, no request database can be found in the cited references.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, and 16 and dependent Claims 2, 4, 5, 7-10, 17, and 18 as if the discussed arguments were set forth here in full.

14. Dependent Claim 20

Claim 20 is dependent on Claim 19 and recites that the request database produces a third report accounting for the monetary amount spent by a pharmaceutical company on the drug sample fulfillment program for a drug and a monetary amount associated with prescriptions written by the prescriber for the drug. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter. For example, no request database can be found in the cited references.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, and 16 and dependent Claims 2, 4, 5, 7-10, and 17-19 as if the discussed arguments were set forth here in full.

15. Independent Claim 21

Independent Claim 21 is directed to a networked system for ordering pharmaceutical sample drugs. The networked system comprises a drug sample fulfillment platform that comprises a drug sample Web site for mating with one or more third-party sites. The mating is dependent on an exchanged transaction that includes a prescriber identifier and a partner

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identifier so as to open the drug sample Web site within the third-party sites instead of another third-party site. The drug sample Web site presents a Web page including selectable options for the prescriber to order drug samples without the use of a sales representative. The time frame in which those drug samples are valid and the dosages and quantity of samples that can be ordered for the prescriber is specified by a set of brand rules. The time frame, dosages, and quantity is different depending on whether the prescriber is a member of one third-party site or a member of another third-party site. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter. For example, Appellants are unable to find where the cited references disclose that the time frame, dosages, and quantity are different depending on whether the prescriber is a member of one third-party site or a member of another third-party site.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, and 16 and dependent Claims 2, 4, 5, 7-10, and 17-20 as if the discussed arguments were set forth here in full.

16. Dependent Claim 22

Claim 22 is dependent on Claim 21 and recites that the drug samples are in a form selected from a group consisting of physical samples, print sample vouchers and coupons, and pre-printed vouchers and coupons. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, and 21 and dependent Claims 2, 4, 5, 7-10, and 17-20 as if the discussed arguments were set forth here in full.

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17. Dependent Claim 23

Claim 23 is dependent on Claim 21 and recites that the selectable options of the Web page include a quantity for each drug sample, which is specifiable by the prescriber. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, and 21 and dependent Claims 2, 4, 5, 7-10, 17-20, and 22 as if the discussed arguments were set forth here in full.

18. Dependent Claim 24

Claim 24 is dependent on Claim 21 and recites that the selectable options of the Web page include a delivery location to which the drug samples will be shipped. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, and 21 and dependent Claims 2, 4, 5, 7-10, 17-20, and 22-23 as if the discussed arguments were set forth here in full.

19. Dependent Claim 25

Claim 25 is dependent on Claim 21 and recites that the selectable options of the Web page include an option for printing on-demand vouchers on a printer in the office of the prescriber. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, and 21 and dependent Claims 2, 4, 5, 7-10, 17-20, and 22-24 as if the discussed arguments were set forth here in full.

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20. Independent Claim 31

Independent Claim 31 is directed to a method for accessing a drug sample fulfillment platform, which comprises activating a link to access the drug sample fulfillment platform from a brand Web site or another brand Web site. The brand Web site is neither a pharma Web site nor a Web site maintaining the computer-implementable drug sample fulfillment platform. The method comprises creating a transaction that includes a prescriber identifier and a partner identifier, the transaction being exchanged so that the prescriber identifier and the partner identifier open the drug sample Web site within the brand Web site and the same prescriber identifier and another partner identifier open the drug sample Web site within another brand Web site. The method further comprises mating the drug sample Web site to either the brand Web site or another brand Web site allowing a prescriber to navigate and order drug samples, without the use of sales representatives, only for drugs specified by the set of brand rules which include physical samples, print sample vouchers and coupons and pre-printed vouchers, and print coupons for the brand Web site of which the prescriber is a member, and different physical samples, print sample vouchers/coupons and pre-printed vouchers/coupons for another brand Web site of which the prescriber is a member. The method further comprises discontinuing redemptions through a pharmacy network by the drug sample fulfillment platform and disabling orders for drug samples in a sample program that has expired. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, and 21 and dependent Claims 2, 4, 5, 7-10, 17-20, and 22-25 as if the discussed arguments were set forth here in full.

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21. Dependent Claim 33

Claim 33 is dependent on Claim 31 and recites that the method causes the prescriber to register if the prescriber identifier is not found in a request database. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31 and dependent Claims 2, 4, 5, 7-10, 17-20, and 22-25 as if the discussed arguments were set forth here in full.

22. Dependent Claim 34

Claim 34 is dependent on Claim 31 and recites, based on a segment to which the prescriber belongs, determining one or more of the following: what drug samples that are available to the prescriber; a drug sample quantity limit that is available to the prescriber; a drug sample time limit in which the drug sample quantity limit is available; the type of sample that is available to the prescriber and the dosages available to the prescriber. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33 as if the discussed arguments were set forth here in full.

23. Dependent Claim 35

Claim 35 is dependent on Claim 34 and recites receiving a selection of physical samples, the act of receiving including receiving a drug selection, a type of drug sample selection, a quantity of drug sample selection, and a delivery address. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

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Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, 33, and 34 as if the discussed arguments were set forth here in full.

24. Dependent Claim 36

Claim 36 is dependent on Claim 35 and recites receiving a print request to print an order form capturing the drug selection, the type of drug sample selection, the quantity of drug sample selection, and the delivery address. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33-35 as if the discussed arguments were set forth here in full.

25. Dependent Claim 37

Claim 37 is dependent on Claim 36 and recites recording the requesting activities of the prescriber in a request database. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33-36 as if the discussed arguments were set forth here in full.

26. Dependent Claim 38

Claim 38 is dependent on Claim 34 and recites receiving a selection for pre-printed vouchers or print coupons, the act of receiving including receiving a drug selection, and a quantity of coupons to be printed. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

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Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33-37 as if the discussed arguments were set forth here in full.

27. Dependent Claim 39

Claim 39 is dependent on Claim 38 and recites receiving a ship request to ship the pre-printed sample vouchers/coupons to a print request to print sample vouchers and coupons capturing the drug selection. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33-38 as if the discussed arguments were set forth here in full.

28. Dependent Claim 40

Claim 40 is dependent on Claim 39 and recites requesting activities of the prescriber in a request database. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33-39 as if the discussed arguments were set forth here in full.

29. Dependent Claim 41

Claim 41 is dependent on Claim 40 and recites receiving a request to print a first report that lists registration data of the prescriber, the requesting activities of the prescriber, and the claim data from a claim processor that is indicative of redeemed print and pre-printed sample vouchers/coupons and print coupons at pharmacies. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

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Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33-40 as if the discussed arguments were set forth here in full.

30. Dependent Claim 42

Claim 42 is dependent on Claim 40 and recites receiving a request to print a second report that correlates drug samples of a drug distributed to the prescriber and with prescriptions written by the prescriber relating to the drug. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33-41 as if the discussed arguments were set forth here in full.

31. Dependent Claim 43

Claim 43 is dependent on Claim 40 and recites receiving a request to print a third report that accounts for the return on investment for a monetary amount spent on a drug sample distribution program for a drug and the monetary amount received from prescriptions for the drug. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33-42 as if the discussed arguments were set forth here in full.

32. Dependent Claim 44

Claim 44 is dependent on Claim 40 and recites detecting fraud by comparing the drug sample quantity limit and the time frame in which the drug sample quantity limit is available to the prescriber and the claim data which is indicative of the number of pre-printed vouchers and

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print coupons redeemed by patients. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33-43 as if the discussed arguments were set forth here in full.

33. Dependent Claim 45

Claim 45 is dependent on Claim 40 and recites refining the drug sample quantity limit of the prescriber based on the number of redemptions of print or pre-printed sample vouchers and coupons associated with the prescriber. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33-44 as if the discussed arguments were set forth here in full.

34. Dependent Claim 51

Claim 51 is dependent on Claim 1 and recites that the fulfillment platform comprises a pharma rules sample engine for performing personalization and intelligent brand rule implementation; a marketing sample engine for integrating the drug sample suppliers and Web portals for prescribers; and the pharma rules sample engine and the marketing sample engine being based on the set of brand rules and on a set of prescriber preferences. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, and 33-45 as if the discussed arguments were set forth here in full.

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35. Dependent Claim 52

Claim 52 is dependent on Claim 51 and recites that the marketing sample engine links the drug sample fulfillment platform to one or more suppliers and drug samples so as to inhibit the lack of supply of sample drugs desired by the prescriber or inhibit the inconsistent supply of drug samples desired by the prescriber. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, 33-45, and 51 as if the discussed arguments were set forth here in full.

36. Dependent Claim 53

Claim 53 is dependent on Claim 6 and recites that the fulfillment platform implements a set of brand rules under which pharmaceutical drug samples are distributed, when said brand rules include: products; allocation quantities; dosages; sample types selected from a group consisting of live samples, pre-printed coupons/sample vouchers, and on-demand print sample vouchers/sample vouchers. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, 33-45, 51, and 52 as if the discussed arguments were set forth here in full.

37. Dependent Claim 54

Claim 54 is dependent on Claim 6 and recites that the fulfillment platform implements a set of brand rules for distributing pharmaceutical drug samples, the brand rules including timing considerations that are selected from a group consisting of sample offer time limits and rolling expiration dates for vouchers from either within or between brands for which a quantity of drug

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samples can be ordered. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, 33-45, and 51-53 as if the discussed arguments were set forth here in full.

38. Dependent Claim 55

Claim 55 is dependent on Claim 6 and recites that the fulfillment platform comprises a pharma rules sample engine for implementing brand rules under which a prescriber may obtain drug samples, the pharma rules sample engine modifying the brand rules so as to change the quantity limit of the drug samples to be distributed to the prescriber. Appellants are unable to find and the Examiner has failed to show where the cited references disclose the claimed subject matter.

Appellants incorporate by reference the arguments discussed previously in connection with independent Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, 33-45, and 51-54 as if the discussed arguments were set forth here in full.

E. A Recap of the Claimed Subject Matter Clearly Shows That the Non-Patent References, Peyrelevade et al., or Feeney et al., or Their Combination Does Not Teach, Let Alone Render Unpatentable, the Claimed Subject Matter

Clearly the non-patent references, Peyrelevade et al., Feeney et al., each alone, much less in combination, fail to teach or suggest the subject matter of Claim 1. More specifically, none of these references, alone or in combination, teaches or suggests "a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site," as recited in Claim 1, among other

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claim features. As a result, Appellants submit that Claim 1 is clearly allowable in view of the teachings of the references.

With respect to dependent Claims 2, 4, 5, 51, and 52, all of which depend directly or indirectly from Claim 1, it is also clear that the subject matter of these claims is neither taught nor suggested by the applied and cited references, namely, the non-patent references, Peyrelevade et al., and Feeney et al., particularly when the features are considered in combination with the recitations of the claims from which these claims individually depend. In summary, Claims 2, 4, 5, 51, and 52, are submitted to be allowable for reasons in addition to the reasons why Claim 1 is submitted to be allowable.

The subject matter of Claim 6 cannot be found in the teachings or suggestions of the non-patent references, Peyrelevade et al., or Fenney et al. More specifically, none of these references, alone or in combination, teaches or suggests "a first set of Web pages coupled to the drug sample fulfillment platform through which a prescriber can access the drug sample fulfillment platform to order drug samples if a set of brand rules which specify drug sample availability and characteristics for the prescriber permits the prescriber to access the drug sample fulfillment platform," as recited in Claim 6, among other claim features. As a result, Appellants submit that Claim 6 is clearly allowable in view of the teachings of the references.

Regarding dependent Claims 7-10 and 53-55, all of which depend directly or indirectly from Claim 6, it is also clear that the subject matter of these claims is neither taught nor suggested by the applied and cited references, namely, the non-patent references, Peyrelevade et al., and Feeney et al., particularly when the features are considered in combination with the recitations of the claims from which these claims individually depend. In summary, Claims 7-10 and 53-55 are submitted to be allowable for reasons in addition to the reasons why Claim 6 is submitted to be allowable.

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The claimed feature "the drug sample fulfillment platform electronically notifying the prescriber when the prescriber has not ordered drug samples for a certain amount of time," as recited by Claim 16 cannot be found in the non-patent references, Peyrelevade et al., or Feeney et al. As a result, Appellants submit that Claim 16 is clearly allowable in view of the teachings of the references.

Claims 17-20 depend either directly or indirectly from Claim 16. No persuasive prima facie case has been made that the subject matter of these claims is taught or suggested by the applied and cited references, namely, the non-patent references, Peyrelevade et al., and Feeney et al., particularly when the features are considered in combination with the recitations of the claims from which these claims individually depend. In summary, Claims 17-20 are submitted to be allowable for reasons in addition to the reasons why Claim 16 is submitted to be allowable.

It is also clear that the non-patent references, Peyrelevade et al., Feeney et al., each alone, much less in combination, fail to teach or suggest the subject matter of Claim 21. More specifically, none of these references, alone or in combination, teaches or suggests,

> the time frame in which those drug samples are valid, and the dosages and quantity of samples that can be ordered for the prescriber being specified by a set of brand rules, the time frame, dosages and quantity being different depending on whether the prescriber is a member of the one third party site or a member of the another third party site,

as recited in Claim 21, among other claimed features. As a result, Appellants submit that Claim 21 is clearly allowable in view of the teachings of the references.

With respect to dependent Claims 22-25, all of which depend directly or indirectly from Claim 21, it is also clear that the subject matter of these claims is neither taught nor suggested by the applied and cited references, namely, the non-patent references, Peyrelevade et al., and Feeney et al., particularly when the features are considered in combination with the recitations of the claims from which these claims individually depend. In summary, Claims 22-25 are

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submitted to be allowable for reasons in addition to the reasons why Claim 21 is submitted to be allowable.

The subject matter of Claim 31 cannot be found in the teachings or suggestions of the non-patent references, Peyrelevade et al., or Fenney et al. More specifically, none of these references, alone or in combination, teaches or suggests "discontinuing redemptions through a pharmacy network by the drug sample fulfillment platform and disabling orders for drug samples in a sample program that has expired," as recited in Claim 31, among other claim features. As a result, Appellants submit that Claim 31 is clearly allowable in view of the teachings of the references.

Regarding dependent Claims 33-45, all of which depend directly or indirectly from Claim 31, it is also clear that the subject matter of these claims is neither taught nor suggested by the applied and cited references, namely, the non-patent references, Peyrelevade et al., and Feeney et al., particularly when the features are considered in combination with the recitations of the claims from which these claims individually depend. In summary, Claims 33-45 are submitted to be allowable for reasons in addition to the reasons why Claim 31 is submitted to be allowable.

In light of the foregoing remarks, it is clear that none of the applied and cited references teaches, let alone renders unpatentable, the claimed subject matters recited in Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, 33-45, and 51-55. The applied and cited references are directed to selling the same product while customizing information, work in an entirely different manner from the present subject matter, or simply have nothing to do with the claimed subject matter. The claimed subject matter is directed to an entirely different concept and solution.

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In view of the foregoing remarks, Appellants submit that all of the claims in the present application are patentably distinguishable over the teachings of the non-patent references, Peyrelevade et al., Feeney et al., or their combination. Therefore, it is submitted that the rejections of Claims 1, 6, 16, 21, and 31, and dependent Claims 2, 4, 5, 7-10, 17-20, 22-25, 33-45, and 51-55 were erroneous, and reversal of the rejections is respectfully requested.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. (Previously presented) A system for promoting pharmaceutical drugs, comprising:

a computer-readable set of brand rules for guiding a distribution of drug samples of a drug to cause a prescriber's drug sample availability and characteristics while a member of one brand Web site to be different from the same prescriber while a member of another brand Web site; and

a computer-implementable drug sample fulfillment platform that is Web-based for implementing the set of brand rules to allow a prescriber to obtain drug samples to dispense to a patient without the use of a sales representative, the computer-implementable drug sample fulfillment platform mating with either the brand Web site or the another brand Web site depending on an exchanged transaction that includes a prescriber identifier and a partner identifier so as to open the computer-implementable drug sample fulfillment platform within the brand Web site or the another brand Web site, the computer-implementable drug sample fulfillment platform electronically notifying the prescriber about the availability of drug samples, the brand Web sites being neither a pharma Web site nor a Web site maintaining the computer-implementable drug sample fulfillment platform.

2. (Original) The system of Claim 1, wherein drug samples include physical samples.

3. (Canceled)

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4. (Original) The system of Claim 1, wherein drug samples include a coupon printed in the office of the prescriber, which is networked to the drug sample fulfillment platform.

5. (Previously presented) The system of Claim 4, wherein the drug sample vouchers, which are in a printed form, are redeemable at a pharmacy, redeemed data being generated by the drug sample fulfillment platform for refining the brand rules so as to better guide allocation and distribution of the drug samples.

6. (Previously presented) A system for distributing pharmaceutical drugs, comprising:

a drug sample fulfillment platform that comprises a drug sample Web site for mating with one or more third party sites depending on an exchanged transaction that includes a prescriber identifier and a partner identifier so as to open the drug sample Web site within the third party site instead of another third party site, for accessing drug sample services without the use of a sales representative; and

a first set of Web pages coupled to the drug sample fulfillment platform through which a prescriber can access the drug sample fulfillment platform to order drug samples if a set of brand rules which specify drug sample availability and characteristics for the prescriber permits the prescriber to access the drug sample fulfillment platform, the set of brand rules causing the drug samples available to the prescriber, who is a

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member of the one third party site, to be different from the available drug samples of the another third party site.

7. (Previously presented) The system of Claim 6, further comprising a second set of Web pages coupled to the drug sample fulfillment platform through which a sales representative can access the drug sample fulfillment platform to print sample vouchers coupons.

8. (Previously presented) The system of Claim 6, further comprising a third set of Web pages coupled to the drug sample fulfillment platform through which a patient can access the drug sample fulfillment platform to obtain sample vouchers and coupons.

9. (Previously presented) The system of Claim 6, wherein the first set of Web pages display a list of drug samples available to the prescriber to order drug samples in a form selected from a group consisting of physical samples, pre-printed vouchers, and print on-demand sample vouchers and coupons.

10. (Previously presented) The system of Claim 6, wherein the first set of Web pages display a list of the order history of the prescriber, the list including a date, drug samples, dosages, and quantity ordered by the prescriber.

11-15. (Canceled)

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16. (Previously presented) A drug sample fulfillment platform, comprising:

a drug sample Web site for mating with a brand Web site or another brand Web site that is selected from a group consisting of prescriber-oriented Web portals providing direct or indirect access to drug and/or general medical information, an e-Detailing service, a Web site regarding a drug brand or group of brands, and an online physician learning site, the mating being dependent on an exchanged transaction that includes a prescriber identifier and a partner identifier so as to open the drug sample Web site within the brand Web site instead of the another brand Web site; and

a request database for receiving requests of a prescriber through the drug sample Web site for drug samples, the request database responding to the prescriber by allowing the prescriber to print sample vouchers or coupons or to print an order form for physical samples or pads of pre-printed vouchers, without the use of a sales representative, a set of brand rules allowing the prescriber while a member of the brand Web site to receive a set of drug samples in the form of print sample vouchers and coupons, order forms for physical samples, or pads of pre-printed vouchers and in dosages and quantities different from another set of drug samples, dosages and quantities, while the prescriber is a member of the another brand Web site, the drug sample fulfillment platform electronically notifying the prescriber when the prescriber has not ordered drug samples for a certain amount of time.

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17. (Original) The drug sample fulfillment platform of Claim 16, wherein the request database receives claim information when a patient redeems a print coupon or a pre-printed voucher for physical samples.

18. (Original) The drug sample fulfillment platform of Claim 17, wherein the request database produces a first report accounting for the number of coupons or vouchers redeemed by patients of the prescriber.

19. (Original) The drug sample fulfillment platform of Claim 18, wherein the request database produces a second report correlating an allocation of drug samples of a drug to the prescriber with the number of prescriptions written by the prescriber relating to the drug.

20. (Original) The drug sample fulfillment platform of Claim 19, wherein the request database produces a third report accounting for the monetary amount spent by a pharmaceutical company on a drug sample fulfillment program for a drug and a monetary amount associated with prescriptions written by the prescriber for the drug.

21. (Previously presented) A networked system for ordering pharmaceutical sample drugs, comprising:

a drug sample fulfillment platform that comprises a drug sample Web site for mating with one or more third party sites, the mating being dependent on an exchanged transaction that includes a prescriber identifier

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and a partner identifier so as to open the drug sample Web site within the third party site instead of the another third party site, the drug sample Web site presenting a Web page including selectable options for the prescriber to order drug samples without the use of a sales representative, the time frame in which those drug samples are valid, and the dosages and quantity of samples that can be ordered for the prescriber being specified by a set of brand rules, the time frame, dosages and quantity being different depending on whether the prescriber is a member of the one third party site or a member of the another third party site.

22. (Previously presented) The networked system of Claim 21, wherein the drug samples are in a form selected from a group consisting of physical samples, print sample vouchers and coupons, and pre-printed vouchers and coupons.

23. (Original) The networked system of Claim 21, wherein the selectable options of the Web page include a quantity for each drug sample, which is specifiable by the prescriber.

24. (Original) The networked system of Claim 21, the selectable options of the Web page include a delivery location to which the drug samples will be shipped.

25. (Original) The networked system of Claim 21, wherein the selectable options of the Web page include an option for printing on-demand vouchers on a printer in the office of the prescriber.

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26. (Withdrawn) A method for selecting prescribers for a drug sample distribution, comprising:

dividing prescribers into one or more segments based on pharma brand manager defined criteria;

within a segment, associating products, allocation quantity, sample type and dosages that is selected from a group consisting of live samples, pre-printed sample vouchers/coupons, and print on-demand coupons/sample vouchers, and drug strength from either within or between brands based on brand rules; and

within a segment, associating timing considerations that are selected from a group consisting of sample offer time limit and rolling expiration dates for vouchers from either within or between brands based on brand rules.

27. (Withdrawn) The method of Claim 26, further comprising within a segment, the association of a combination of sample types to be made available to the prescribers, a sample type being selected from a group consisting of physical samples, pre-printed vouchers, and print coupons.

28. (Withdrawn) The method of Claim 26, selecting one or more deciles of prescribers to target the drug sample distribution prior to executing the above acts.

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29. (Withdrawn) The method of Claim 26, selecting one or more specialties of prescribers to target the drug sample distribution prior to executing the above acts.

30. (Withdrawn) The method of Claim 26, charging a pharmaceutical company a fee for implementing the brand rules in selecting prescribers.

31. (Previously presented) A method for accessing a drug sample fulfillment platform, comprising:

activating a link to access the drug sample fulfillment platform from a brand Web site or another brand Web site, the brand Web sites being neither a pharma Web site nor a Web site maintaining the computer-implementable drug sample fulfillment platform;

creating a transaction that includes a prescriber identifier and a partner identifier, the transaction being exchanged so that the prescriber identifier and the partner identifier open the drug sample Web site within the brand Web site and the same prescriber identifier and another partner identifier open the drug sample Web site within another brand Web site;

mating the drug sample Web site to either the brand Web site or another brand Web site allowing a prescriber to navigate and order drug samples, without the use of sales representatives, only for drugs specified by a set of brand rules which include physical samples, print sample vouchers and coupons and pre-printed vouchers, and print coupons for the brand Web site of which the prescriber is a member and different physical

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samples, print sample vouchers/coupons and pre-printed vouchers/coupons for the another brand Web site of which the prescriber is a member; and

discontinuing redemptions through a pharmacy network by the drug sample fulfillment platform and disabling orders for drug samples in a sample program that has expired.

32. (Canceled)

33. (Original) The method of Claim 31, causing the prescriber to register if the prescriber identifier is not found in a request database.

34. (Previously presented) The method of Claim 31, based on a segment to which the prescriber belongs, determining one or more of the following: what drug samples that are available to the prescriber; a drug sample quantity limit that is available to the prescriber; a drug sample time limit in which the drug sample quantity limit is available; the type of sample that is available to the prescriber and the dosages available to the prescriber.

35. (Original) The method of Claim 34, receiving a selection for physical samples, the act of receiving including receiving a drug selection, a type of drug sample selection, a quantity of drug sample selection, and a delivery address.

36. (Original) The method of Claim 35, receiving a print request to print an order form capturing the drug selection, the type of drug

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sample selection, the quantity of drug sample selection, and the delivery address.

37. (Original) The method of Claim 36, recording the requesting activities of the prescriber in a request database.

38. (Original) The method of Claim 34, receiving a selection for pre-printed vouchers or print coupons, the act of receiving including receiving a drug selection, and a quantity of coupons to be printed.

39. (Previously presented) The method of Claim 38, receiving a ship request to ship the pre-printed sample vouchers/coupons or a print request to print sample vouchers and coupons capturing the drug selection.

40. (Original) The method of Claim 39, recording the requesting activities of the prescriber in a request database.

41. (Previously presented) The method of Claim 40, receiving a request to print a first report that lists registration data of the prescriber, the requesting activities of the prescriber, and the claim data from a claim processor that is indicative of redeemed print and pre-printed sample vouchers/coupons and print coupons at pharmacies.

42. (Original) The method of Claim 40, receiving a request to print a second report that correlates drug samples of a drug distributed to the prescriber and with prescriptions written by the prescriber relating to the drug.

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43. (Original) The method of Claim 40, receiving a request to print a third report that accounts for the return on investment for a monetary amount spent on a drug sample distribution program for a drug and the monetary amount received from prescriptions for the drug.

44. (Original) The method of Claim 40, detecting fraud by comparing the drug sample quantity limit and the time frame in which the drug sample quantity limit is available to the prescriber and the claim data which is indicative of the number of pre-printed vouchers and print coupons redeemed by patients.

45. (Previously presented) The method of Claim 40, refining the drug sample quantity limit of the prescriber based on the number of redemptions of print or pre-printed sample vouchers and coupons associated with the prescriber.

46. (Withdrawn) A method for creating a stream of revenue from a drug sample distribution, comprising:

capturing a sample request on a drug sample fulfillment platform; and

charging a pharmaceutical company a transaction request fee for the sample request for drug samples associated with a drug sponsored by the pharmaceutical company.

47. (Withdrawn) The method of Claim 46, preparing one or more reports based on prescriber data, sample request data, and claim data

extracted from the drug sample fulfillment platform, and charging a reporting fee to the pharmaceutical company for the preparation of the one or more reports.

48. (Withdrawn) The method of Claim 46, charging the pharmaceutical company a sample redemption fee for each successful redemption of a pre-printed voucher or print coupon by a patient as detected by the drug sample fulfillment platform.

49. (Withdrawn) The method of Claim 46, charging the pharmaceutical company annually a brand service fee for the use of the drug sample fulfillment platform, the maintenance of the drug sample fulfillment platform, and the customization of the drug sample fulfillment platform to comply with the brand rules.

50. (Withdrawn) The method of Claim 46, charging the pharmaceutical company an implementation fee for tailoring the drug sample fulfillment platform for segments of prescribers.

51. (Previously presented) The system of Claim 1, wherein said fulfillment platform comprising:

a pharma rules sample engine for performing personalization and intelligent brand rule implementation;

a marketing sample engine for integrating with drug sample suppliers and Web portals for prescribers; and

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the pharma rules sample engine and the marketing sample engine being based on the set of brand rules and on a set of prescriber preferences.

52. (Previously presented) The system according to Claim 51, wherein the marketing sample engine links the drug sample fulfillment platform to one or more suppliers and drug samples so as to inhibit the lack of supply of sample drugs desired by the prescriber or inhibit the inconsistent supply of drug samples desired by the prescriber.

53. (Previously presented) The system according to Claim 6, wherein said fulfillment platform implementing a set of brand rules under which pharmaceutical drug samples are distributed, wherein said brand rules include: products; allocation quantity; dosages, sample type selected from a group consisting of live samples, pre-printed coupons/sample vouchers, and on-demand print sample vouchers/sample vouchers.

54. (Previously presented) The system according to Claim 6, wherein said fulfillment platform implementing a set of brand rules for distributing pharmaceutical drug samples, said brand rules including timing considerations that are selected from a group consisting of sample offer time limits and rolling expiration dates for vouchers from either within or between brands for which a quantity of drug samples can be ordered.

55. (Previously presented) The system according to Claim 6, wherein said fulfillment platform comprising a pharma rules sample

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engine for implementing brand rules under which a prescriber may obtain drug samples, the pharma rules sample engine modifying the brand rules so as to change a quantity limit of the drug samples to be distributed to the prescriber.

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IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.

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